

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



RICHARD JOHNSON,

Plaintiff,

v.

20-CV-810 (JLS) (JJM)

IMAM J. YASAR,

Defendant.

DECISION AND ORDER

Pro se plaintiff Richard Johnson commenced this action on June 29, 2020, when he filed the complaint and paid the filing fee. Dkt. 1. On January 20, 2021, the Court issued a decision and order dismissing claims against two defendants, with leave to amend, and allowing claims against Defendant Imam J. Yasar to proceed. Dkt. 2. When Johnson did not submit an amended complaint, the Court issued an order directing the United States Marshal to serve Defendant Yasar with the summons, complaint, and the Court's screening order. Dkt. 6. Defendant moved to dismiss the complaint (Dkt. 14), and Johnson opposed (Dkt. 18). On July 5, 2023, this Court issued a decision and order accepting and adopting Judge McCarthy's Report and Recommendation¹ to grant, in part, and deny, in part, Defendant's motion to dismiss. Dkt. 22 (decision and order); Dkt. 19 (Report and Recommendation).

¹ On December 2, 2022, this Court referred the case to Judge McCarthy for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). *See* Dkt. 15.

Defendant answered the complaint on September 5, 2023. Dkt. 26. The same day, Judge McCarthy issued an order setting forth the details of the preliminary pretrial conference, which was to occur on October 3, 2023, and mailed a copy of that order to Johnson. Dkt. 27. Counsel for Defendant appeared for the scheduled conference, but Johnson did not. *See* Dkt. 28. Judge McCarthy rescheduled the conference and alerted Johnson that, if he did not appear for the rescheduled conference, Judge McCarthy would recommend dismissal of the case, pursuant to Federal Rule of Civil Procedure 41(b). Dkt. 29.² On October 19, 2023, counsel for Defendant appeared for the rescheduled preliminary pretrial conference, but Johnson again failed to appear. Dkt. 30. As a result, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that this Court dismiss Johnson’s case for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b). Dkt. 31.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the

² Judge McCarthy also mailed a copy of this text order, which set the new conference date and included the notice of Rule 41(b) dismissal, to Johnson.

recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court nevertheless reviewed Judge McCarthy's R&R. Based on that review, and absent any objections, the Court accepts and adopts the R&R.

For the reasons stated above and in the R&R, the Court **dismisses the case, pursuant to Federal Rule of Civil Procedure 41(b)**. The Clerk of the Court shall close this case.

SO ORDERED.

Dated: January 9, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE